

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rule making related to statewide sales and services tax for school infrastructure and providing an opportunity for public comment

The State Board of Education hereby proposes to amend Chapter 96, “Statewide/Local Option Sales and Services Tax for School Infrastructure,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 423E and 423F and 2019 Iowa Acts, chapter 166 [House File 546].

Purpose and Summary

Chapter 96 addresses the requirement for smaller districts to provide a certificate of need to expend funds received from the statewide sales and service tax for infrastructure (secure an advanced vision for education [SAVE]) fund. The proposed amendments to Chapter 96 remove references to the former local option sales and services tax for school infrastructure, which was ended effective July 1, 2008, and reflect legislative changes brought about during the 2019 Legislative Session. A more detailed explanation of these amendments follows:

Items 1, 2, and 4 remove references to the former local option sales and services tax and definitions that were specifically related to this tax.

Item 3 implements 2019 Iowa Acts, chapter 166, which adds requirements pertaining to the request for a certificate of need, which is required for smaller districts to expend funds received from the SAVE fund. This item also includes an updated Iowa Code citation and changes references from the former budget guarantee to the budget adjustment under Iowa Code section 257.14.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

An agencywide waiver provision is provided in 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 29, 2019. Comments should be directed to:

Nicole Proesch
Department of Education
Grimes State Office Building, Second Floor
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: nicole.proesch@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 29, 2019
1 to 2 p.m.

State Board Room, Second Floor
Grimes State Office Building
East 14th Street and Grand Avenue
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend **281—Chapter 96**, title, as follows:

STATEWIDE/LOCAL OPTION STATEWIDE SALES AND SERVICES TAX FOR SCHOOL INFRASTRUCTURE

ITEM 2. Amend rule 281—96.1(423E,423F) as follows:

281—96.1(423E,423F) Definitions. For purposes of these rules, the following definitions shall apply:

“*Actual enrollment*” means the number of students each school district certifies to the department by October 15 of each year in accordance with Iowa Code section ~~257.6, subsection 1~~ 257.6(1).

“*Base year*” means the school year ending during the calendar year in which the budget is certified.

“*Certificate of need*” means the written department of education approval a school district must obtain if the district has a certified enrollment of fewer than 250 students or a certified enrollment of fewer than 100 students in grades ~~9-12~~ 9 through 12. The certificate of need must be obtained by the school district before the district may expend the supplemental school infrastructure amount for new construction or for payments for bonds issued for new construction against the supplemental school infrastructure amount or to expend the statewide sales and services amount ~~or remaining unobligated local option sales and services balances~~ for new construction.

“*Combined actual enrollment*” means the sum of the students in each school district located in whole or in part in a county who are residents of that county as determined by rule 281—96.2(423E,423F).

“*Department*” means the state department of education.

“*Guaranteed school infrastructure amount*” means for a school district the statewide tax revenues per student, multiplied by the quotient of the tax rate percent imposed in the county, divided by 1 percent

and multiplied by the quotient of the number of quarters the tax is imposed during the fiscal year divided by four quarters.

"New construction" means any erection of a facility or any modification or addition to a facility except for repairing existing schoolhouses or school buildings or for construction necessary for compliance with the federal Americans with Disabilities Act, ~~pursuant to 42 U.S.C. Section 12101-12117~~ Sections 12101 to 12117.

"Nonresident student" means a student enrolled in a school district who does not meet the requirements of a resident as defined in Iowa Code section 282.1.

"Reconstruction" means rebuilding or restoring as an entity a thing that was lost or destroyed.

"Repair" means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance.

"Resident student" means a student enrolled in a school district who meets the requirements of a resident as defined in Iowa Code section 282.1.

"Revenue purpose statement" means a document prepared by the school district indicating the specific purpose or purposes for which the funding, pursuant to Iowa Code chapters 423E and 423F, will be expended.

~~*"Sales tax"* means a local option sales and services tax for school infrastructure imposed in accordance with Iowa Code chapter 423E and the statewide sales and services tax for school infrastructure imposed in accordance with Iowa Code chapter 423F.~~

~~*"Sales tax capacity per student"* means for a school district the estimated amount of revenues that a school district receives or would receive if a local sales and services tax for school infrastructure purposes is imposed at 1 percent in the county, divided by the school district's actual enrollment.~~

"School budget review committee" or *"SBRC"* means a committee that is established under Iowa Code section 257.30 in the department of education and that consists of the director of the department of education in an ex officio, nonvoting capacity, the director of the department of management, and ~~three~~ four members who are knowledgeable in the areas of Iowa school finance or public finance issues and who are appointed by the governor to represent the public.

"School district" means a public school district in Iowa accredited by the state department of education.

"School infrastructure" means those activities for which a school district is authorized to contract indebtedness and issue general obligation bonds under Iowa Code section 296.1, except those activities related to a teacher's or superintendent's home or homes. These activities include the construction, reconstruction, repair, demolition, purchase, or remodeling of schoolhouses, stadiums, gymnasiums, fieldhouses, and bus garages; the procurement of schoolhouse sites and site improvements; and the payment or retirement of general obligation bonds issued for school infrastructure purposes or of sales and services tax for school infrastructure revenue bonds. Additionally, school infrastructure includes school safety and security infrastructure under Iowa Code section 423F.3(6) as amended by 2019 Iowa Acts, chapter 166, section 15. The definition of school infrastructure also includes activities for which revenues under Iowa Code sections 298.3 and 300.2 may be spent and property tax relief for the debt service property tax levy, regular physical plant and equipment property tax levy, voter-approved physical plant and equipment income surtax and property tax levy, and the public education and recreation property tax levy.

"Site improvement" means grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for public improvements defined in Iowa Code section 384.37.

"Statewide tax revenues per student" means the amount per student established by Iowa Code ~~subsection~~ section 423E.4(2) "b"(3).

~~“Supplemental school infrastructure amount” means the guaranteed school infrastructure amount for the school district less the pro rata share of local sales and services tax for school infrastructure purposes.~~

ITEM 3. Amend rules 281—96.4(423E,423F) and 281—96.5(423E,423F) as follows:

281—96.4(423E,423F) Application and certificate of need process.

96.4(1) *When application needed; application period.* ~~After July 1, 2008, a~~ A school district with a certified enrollment of fewer than 250 students in the entire district or a certified enrollment of fewer than 100 students in grades 9 through 12 shall not expend the amount of statewide ~~or local~~ sales and services tax received for new construction without prior application to the department and receipt of a certificate of need. A certificate of need is not required for repair of school facilities; for purchase of equipment, technology, or transportation equipment for transporting students as provided in Iowa Code section 298.3; school safety and security infrastructure as provided in Iowa Code section 423F.3(6) as amended by 2019 Iowa Acts, chapter 166, section 15, other than new construction; or for construction necessary to comply with the federal Americans With Disabilities Act, 42 U.S.C. Sections 12101 to 12117. Applications shall be hand-delivered or postmarked no later than eight weeks prior to a regularly scheduled meeting of the SBRC. Delivery of applications by way of facsimile transmission is not allowed. The SBRC holds regularly scheduled meetings ~~on the second Monday of September, December, March, and May~~ as stipulated in rule 289—1.4(257).

96.4(2) *Application form.* The department shall make available an application form to Iowa public school districts. Each applicant school district shall use the form prepared for this purpose and in the manner prescribed by the department. A school district may submit only one application during the application period. The application form shall include, but shall not be limited to, the following information:

a. and b. No change.

c. The description of need including ~~documentation of the infeasibility~~ a cost-benefit analysis of remodeling, reconstructing, or repairing the existing structure rather than implementing this project and a description of any alternatives considered and the reasons for rejection.

d. No change.

e. If a school district’s enrollment in the current year or any of the five years of projected enrollments is fewer than 250 students, the school district shall attach a copy of a feasibility study pursuant to Iowa Code ~~subsection 256.9(34)~~ section 256.9(30) or similar study conducted within the past three years with an explanation of how the study supports the project that is the subject of the application.

f. A description of the ~~nature~~ benefits and effects of the project and its relationship to improving ~~educational opportunities for students~~ student learning including alignment with school district student achievement goals and including the school district’s ability to meet or exceed the educational standards. A school district shall provide:

(1) A list of waivers applied for and granted to the school district or any deficiencies from educational standards if no waiver was granted.

(2) A list of courses offered by major curricular area in grades 9 through 12. The list shall include five years of history and three years of projected curricula if the proposed new construction will house any of the grades 9 through 12.

(3) A list of current and projected staffing patterns including assignments and licensure.

g. No change.

h. Evidence of a healthy financial condition and long-term financial stability. The school district shall provide:

(1) Calculation of unspent balance on the generally accepted accounting principles (GAAP) basis. The calculation shall include five years of history and three years of projected balances. The calculation of budget authority shall show and project the effect of the ~~phaseout of the budget guarantee~~ adjustment under Iowa Code section 257.14. Projected allowable growth shall be that known or generally anticipated

at the time of the application. If the percent of allowable growth is not known or anticipated, an allowable growth of no more than 2 percent shall be utilized in the annual projections.

(2) If the unspent balance is negative in any current or projected year on the GAAP basis, the school district shall include a copy of the corrective action plan, if any, submitted to the SBRC.

(3) Calculation of fund balance on the GAAP basis by fund. The calculation shall include five years of history and three years of projected balances.

i. If a school district currently has bonded indebtedness, the voter-approved physical plant and equipment levy, or categorical funding for school infrastructure, the school district shall include a statement identifying the implementation date, final year of the bonded indebtedness or the final year of the levy or categorical funding, and the levy rate. The school district shall list any obligations against those current balances and future revenues or against the ~~local option or~~ statewide sales and services tax for school infrastructure amounts. The school district shall attach a copy of the school district's revenue purpose statement, if any.

j. to l. No change.

96.4(3) to 96.4(7) No change.

281—96.5(423E,423F) Review process.

96.5(1) Task force. The department shall form a task force to review applications for certificate of need and to provide recommendations to the SBRC. The department shall invite participants from large, medium, and small school districts, the state fire marshal's office, education and professional organizations, or other individuals knowledgeable in school infrastructure and construction issues. The department, in consultation with the task force, shall establish the parameters and criteria for awarding certificates of need based on information listed in Iowa Code section 423E.4, ~~subsection 5~~ 423E.4(5), which includes required consideration of the following:

- a. Enrollment trends in the grades that will be served at the new construction site.
- b. The ~~infeasibility~~ cost-benefit analysis of remodeling, reconstructing, or repairing existing buildings.
- c. The fire and health safety needs of the school district.
- d. The distance, convenience, cost of transportation, and accessibility of the new construction site to the students to be served at the new construction site.
- e. Unavailability of alternative, less costly, or more effective means of serving the needs of the students.
- f. The financial condition of the school district, including the effect of the ~~decline of the budget guarantee~~ adjustment and unspent balance.
- g. Broad and long-term ability of the school district to support the facility and the quality of the academic program.
- h. Cooperation with other educational entities including other school districts, area education agencies, postsecondary institutions, and local communities.

96.5(2) and 96.5(3) No change.

96.5(4) Ineligibility for approval. If either of the following two descriptions applies to the school district, the school district shall not be eligible for a certificate of need unless a feasibility study conducted within the past three years pursuant to Iowa Code ~~subsection 256.9(34)~~ section 256.9(30) and the AEA plan pursuant to Iowa Code sections 275.1 to 275.4 determine that sharing, reorganization, or dissolution is not feasible for the school district.

a. ~~If either the~~ The current enrollment or any of the five years of projected enrollments for the school district is fewer than 250 students.

b. ~~If either the~~ The current enrollment or any of the five years of projected enrollments for the school district for grades 9 through 12 is fewer than a total of 100 students, if a high school building is the subject of the application.

96.5(5) School budget review committee. The SBRC shall review the recommendations from the task force for approval of certificates of need. The committee shall make recommendations on approval to the department for final consideration.

ITEM 4. Amend subrule 96.7(2) as follows:

96.7(2) *Accounting for the funding.* All revenues ~~from the local and statewide school infrastructure amounts~~ and all expenditures from the ~~local and~~ statewide school infrastructure amounts shall be separately identified and accounted for in a capital projects fund established for the ~~local option and~~ statewide sales and services tax for school infrastructure proceeds.